IN THE

SUPREME COURT OF THE UNITED STATES

No. 71-512

DISTRICT 20, UNITED MINE WORKERS OF AMERICA,
an Unincorporated Association,
Petitioner,

v.

WILLIE E. SAMS,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

THE QUESTION PRESENTED

Petitioner says that two questions are presented whereas we believe only one question is before this court. His first question is in error because Respondent never contended the Petitioner required him to pay union dues as a condition for eligibility for a pension. Respondent had contended that Petitioner's spokesman told him he "Was eligible." The second question is erroneously stated because Respondent never charged Petitioner with an attempt to enforce union membership by the payment of dues as a prerequisite for eligibility to pension benefits. However, it is quite clear that Petitioner has from the first

to the last contended that Respondent should have gone to the National Labor Relations Board for relief. Petitioner has never told any court what relief the board could have given Sams since he was disabled and not entitled to any wages.

As we see it, the question presented is this:

Does the Labor Management Relations Act deprive a state court of jurisdiction to try a common law action of tort for deceit and award damages in a suit brought by a disabled coal miner against District 20 United Mine Workers of America for knowingly and falsely telling him in 1947 "that he was eligible for a pension" in the United Mine Workers of America Welfare and Retirement Fund and if he kept his dues to the union paid up until he was 60 years old "his time would go on just the same as if he was working in the mine," the spokesman then knowing that the explosion of a dynamite cap three years before had almost blinded the miner and rendered him forever unable to work in the mine so that he could never become eligible for a pension from the United Mine Workers of America Welfare and Retirement Fund.

STATEMENT OF THE CASE

The Petitioner has not stated this case in brief and appendices with sufficient fullness to disclose the legality and justice of the action of the three courts below. We therefore attach as appendices to this brief the original complaint (Appendix A.), the petition for removal (Appendix B.), the order of District Judge remanding the case (Appendix C.), the demurrer to Plea-in-Abatement (Appendix D.), and the amended complaint (Appendix E.) on which the verdict and judgment were rendered, stipulation (Appendix F.) that the Welfare and Retirement Fund is an entity separate and distinct from the Petitioner.

REASONS FOR DENYING THE WRIT

1. This case does not involve a question of national importance worthy of the time and consideration of this heavily burdened court. This is an isolated case. No national nor regional union practice of deceit to get payment of union dues is involved. If the writ is denied no such practice will be likely to be adopted by this or any other labor union. Labor lawyers will spread the word about District 20's treatment of W. E. Sams and its costly consequences and that word will be sufficient deterrent.

2. If this case is in the gravitational field of pre-emption it is on the periphery of that field.

3. The so-called no man's land should not be enlarged. Willie E. Sams was not working and was not entitled to wages the National Labor Relations Board could give him and should not be denied relief afforded by state courts.

4. Labor unions are not entitled to immunity from liability for their confidence men, if they have any.

5. The Labor Management Relations Act does not bar state court action of tort against labor unions.

So many carefully considered opinions and dissents on the pre-emption question have been handed down by this court that it would be presumptious for us to attempt to analyze and distinguish them and submit a more accurate or more general solution of such questions. But we have thought so much on this case and its questions in the six years it has been in our office that we submit our thoughts in hopes that they will help this court achieve equal justice under law for Willie E. Sams.

The vast mass of litigation in the United States, and the almost infinite complexity of problems presented make it

an impossibility for every disappointed litigant to get his grievance considered by this court. In this instance District 20 has had the carefully considered opinion of Chief Judge Seybourne H. Lynne, a judge with 25 years experience (See Appendix C). The trial judge considered demurrer to Petitioner's Plea in Abatement helped by briefs of counsel and then held under advisement Petitioner's motion for a new trial for 16 weeks. The Supreme Court of Alabama had the case under submission for more than a year before handing down its opinion and considered Petitioner's application for rehearing for 8 weeks before denying it. No court ruled that state court action was barred by federal pre-emption.

We do not believe that Congress intended to give nor did it give labor unions the immunity from state court tort actions which Petitioner seeks. Labor unions, their leaders and representatives are not to be trusted with letters of marque under which to prey on disabled Americans. Our government does not draft men into its armed forces by making false statements to them. Since our government does not draft disabled men into its armed forces, labor unions should not be allowed to take money from them by telling lies. The spokesman for the union told Sams he was eligible and that his time was going on just the same as if he were working in the mine. The letter from Welfare and Retirement Fund denied him a pension because he was not working in the mines and his time was not going on (Pages A-3–A-4, A-14–A-15).

The vast sweep of the 1st Amendment to the United States Constitution does not give immunity to deliberate and calculated falsehoods. Freedom to exaggerate and vilify under the Labor Management Relations Act in order to get laborers to join one union rather than another does not entitle them to get money by telling lies. The court has before it a clear cut case of an intentional tort.

We find these words in the case of United Construction Workers v. Laburnum Construction Corp., 347 US 656, 98 L ed 1025, 74 S Ct 833 (1954). "Here Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct."

In the case of Linn v. Plant Guard Workers, 383 US 53, 15 L ed 2nd 582, 86 S Ct 657, this court held that pre-emption did not deprive state court of jurisdiction of a suit for defamation brought by the official of an employer of union labor defamed by the labor union. The opinion refers to San Diego Building Trades Council v. Garmon, 359 US 236, 3 L ed 2nd 775, 79 S. Ct. 773 (1959), and states in part as follows, "In this respect, the court concluded that the States need not yield jurisdiction 'where the activity regulated was a merely peripherial concern of the Labor Management Relations Act.'"

Later on in the opinion we find the following: "In sum, although the Board tolerates intemperate, abusive and inaccurate statements made by the union during attempts to organize employees, it does not interpret the Act as giving either party license to injure the other intentionally by circulating defamatory or insulting material known to be false. See Maryland Drydock Co. v. Labor Board, 183 F 2nd 538 (CA 4th Cir 1950). In such case the one issuing such material forfeits the protection under the Act. Walls Manufacturing Co., 137 NLRB 1317, 1319 (1962)."

If the state court action for defamation, telling a third person a lie which might injure the plaintiff, is not barred by pre-emption of the Labor Management Relations Act then surely telling the plaintiff himself a lie which actually does injure the plaintiff is not barred.

Petitioner seems to rely most heavily upon the opinion in Motor Coach Employees of America v. Lockridge, ...

US ..., 29 L ed 2nd 473, 91 S Ct ..., which is patently distinguishable on its facts from this case and does not give any rule which would require Respondent to go to the National Labor Relations Board for relief.

We submit there is not a no man's land, a place of no law, in our American legal system. Having seen and fought over no man's land in World War I, the writer has a vivid recollection of what no man's land was, a land neither party was able to hold. Although, our dual federal-state legal system may be hard for foreign legal scholars to understand it is an adequate system, it works. What is not given the federal government by the Constitution is reserved to the states or to the people.

Moses justified the laws he proclaimed as the work of God. There are thinkers who deny the existence of God, but no sane thinker denies the existence of the individual human being and his environment. The scholarly Blackstone thought law was a rule of action handed down by a superior to an inferior. We believe law to be an inseparable part of the human life. Wherever a man is there is law. It is not confined to relations with other human beings. The law of self-preservation would apply to Alexander Selkirk. His island habitation was present in nature. The relationship between him and his environment created a duty which we are coming to realize in this chemical age.

Is not common law based on the fact that man carries his law with him wherever he goes? That common law was not known until thoughtful judges handed down their decisions. Our law is an evolving thing, never completely static. We do not understand the believers in evolution to maintain that the evolutionary process is beyond the influence of the men in the society evolving. One of the recent Chief Justices of the United States mentioned the need of judicial restraint. It seems to the writer that

there is a continuing need of judicial adequacy. If a no man's land is left in American Law it is because our judges have not discovered and applied applicable Constitutional and common law principles.

CONCLUSION

In our constitutional form of government the ultimate repository of power is the people. The chief concern of our courts should be the lowly individual. The test of law and order, liberty and freedom, is the amount of it held by the lowly individual. The great and powerful, the rich and influential, the highly organized group usually need restraint, not help. It is the lowly individual who is helpless. To deny poor, blinded, helpless Willie E. Sams access to a state court which can give him full relief and to send him to the National Labor Relations Board which can give him no relief since he was not entitled to any wages is to deny him equal justice under law.

Respectfully submitted

CRAMPTON HARRIS

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Of Counsel

APPENDIX A

The State of Alabama }
County of Jefferson }

To Any Sheriff of the State of Alabama—Greetings:

You are hereby commanded to summon United Mine Workers of America, on unincorporated association functioning as a labor union, and District 20, United Mine Workers of America, an unincorporated association functioning as a labor union, to appear before the Circuit Court, to be held for said County, at the place of holding same, within thirty days from service of this process, then and there to answer the complaint of W. E. Sams.

Witness My Hand, this .... day of April, 1965.

.....Clerk

COMPLAINT

(Filed in Office April 15, 1965)

Circuit Court
Tenth Judicial Circuit of Alabama

W. E. Sams,
Plaintiff,

vs.

United Mine Workers of America, an Unincorporated Association Functioning as a Labor Union, and District 20, United Mine Workers of America, an Unincorporated Association Functioning as a Labor Union,
Defendants.

Case No. .....

Count One

The plaintiff claims of the defendants the sum of One Hundred Fifty Thousand and No/100 ($150,000) Dollars, as damages, for that, heretofore on, to-wit, July 17, 1944, the defendants, acting through its agent or employee, then and there acting within the line and scope of his employment by defendants, and in furtherance of defendants' business, did falsely represent to plaintiff, with knowledge that his representation was false, or with reckless disregard of whether it was false or not, and with the intention to deceive the plaintiff, that plaintiff was eligible for a pension from United Mine Workers of America, Welfare and Retirement Fund, and if he kept his dues as a member of United Mine Workers of America, paid up until he was sixty years of age, he could get said

pension when he reached that age, and if he did not, he would not.

Plaintiff alleges that, at the time said false representation was made, plaintiff was suffering from injuries caused by the explosion on May 29, 1944, of a dynamite cap while he was at work as a coal miner at the Marvel Mine of Roden Coal Company, and plaintiff was then and there almost totally blinded and physically forever unable to work again as a coal miner, and such facts were obvious and known to said agent or employee of defendants, who made false representation with the intent that plaintiff should rely upon the same.

And plaintiff alleges that, relying on the superior knowledge of said agent or employee of defendants, he did continue to keep his dues paid up by paying into local Unions of District 20, United Mine Workers of America, at the rate of $1.25 per month, until he became sixty years of age in the year 1964, although the plaintiff was during that entire period of twenty years, physically unable to work as a coal miner and did not work as such, and all this was known to defendants and to their said agent, servant, or employee acting within the line and scope of his employment.

Plaintiff further alleges that, in 1964, on reaching the age of sixty years, having kept all his union dues fully paid up, and relying on the aforesaid false representations as true, he applied for his pension to the United Mine Workers of America, Welfare and Retirement Fund, and the United Mine Workers of America did reject his application in these words:

"Denial of Pension

The application of Willie Earl Sams, Address Route 2, West Blocton, Alabama, is hereby denied for the following reasons:

"Applicant has not established proof of twenty (20) years' classified service in the coal industry within the thirty (30) year period immediately preceding the date his application was received at the fund— July 15, 1934 to July 15, 1964.

"Applicant claims no employment in the coal industry during 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964; no credit can be given for these years."

Plaintiff claims of defendants' damages, actual and punitive, suffered by him as a proximate consequence of said false representations, in the sum of One Hundred Fifty Thousand and No/100 ($150,000) Dollars.

HARRIS and ESDALE
By /s/ CRAMPTON HARRIS
CRAMPTON HARRIS
Attorneys for Plaintiff

Plaintiff demands a jury for the trial of the above styled cause.

HARRIS and ESDALE
By /s/ CRAMPTON HARRIS
CRAMPTON HARRIS
Attorneys for Plaintiff

Plaintiff's Address:

Route 2
West Blocton, Alabama

Defendants' Address:

United Mine Workers of America
District No. 20
City Federal Building
Birmingham, Alabama

APPENDIX B

In the United States District Court for the
Northern District of Alabama
Southern Division

W. E. Sams, Plaintiff, vs. United Mine Workers of America, an Unincorporated Association, and District 20, United Mine Workers of America, an Unincorporated Association, Defendant.	Civil Action No. .....

PETITION FOR REMOVAL

Your Petitioners, United Mine Workers of America, an Unincorporated Association and labor organization and District 20, United Mine Workers of America, an unincorporated Association, respectfully show unto this Honorable Court that they are named as defendants in the suit which was filed in the Circuit Court of the Tenth Judicial Circuit of Alabama, and that service of the summons in said action was had on the defendants, on, to-wit, the 23rd day of March, 1965. In said suit W. E. Sams is the plaintiff, and the Petitioners, United Mine Workers of America, an Unincorporated Association and labor organization and District 20, United Mine Workers of America, an Unincorporated Association are named as parties defendant. A copy of the summons and complaint in said suit is attached hereto.

The named defendant petitioners here, are labor organizations representing employees in industries affecting commerce and employed in industries engaged in interstate commerce within the meaning of the Labor Management Relations Act of 1947, as amended (29 USCA, 141 et seq.).

That the cause of action herein involves a claim or right arising under a law of the United States regulating interstate commerce in that the same requires the interpretation and application of the provisions of Section 302 of said Act (29 USCA, 186) and of Sections 8(b)(1)(A) and (2) of said Act (29 USCA, 158 (b)(1)(A) and (2)). Such cause of action, claim or right is within the original jurisdiction of this Court, and said suit is founded on a claim or right arising under the Constitution, treaties or laws of the United States. Petitioners have not entered an appearance in said cause.

Wherefore, Petitioners pray this Honorable Court to take jurisdiction of this Petition and issue all necessary orders and process in order to remove the hereinabove referred to case from the Circuit Court of the Tenth Judicial Circuit of Alabama, to the District Court for the Northern District of Alabama, Southern Division.

UNITED MINE WORKERS OF AMERICA, an Unincorporated Association, and DISTRICT 20, UNITED MINE WORKERS OF AMERICA, an Unincorporated Association

By COOPER, MITCH & CRAWFORD

/s/ WILLIAM E. MITCH

Its Attorneys of Record

State of Alabama }
Jefferson County }

Before me, the undersigned authority in and for said County and State, personally appeared William E. Mitch,

who being by me first duly sworn deposes and says that he is attorney for the Petitioners in the above Petition, and is authorized to make this affidavit in their behalf, and that the facts in the foregoing Petition are true.

/s/ WILLIAM E. MITCH
WILLIAM E. MITCH

Sworn to and subscribed before me this 11 day of May, 1965.

/s/ THOMAS N. CRAWFORD, JR.
Notary Public

APPENDIX C

In the United States District Court for the Northern District of Alabama, Southern Division

W. E. Sams, Plaintiff, vs. United Mine Workers of America, an Unincorporated Association, et al., Defendants.	Civil Action No. 65-345

ORDER

(Filed June 9, 1965)

This cause, coming on to be heard, was submitted to the court on motion of the plaintiff, W. E. Sams, to remand this cause to the Circuit Court of the Tenth Judicial Circuit of Alabama, the court from which it was removed to this court.

Upon consideration of the pleadings and briefs of counsel, the court is of the opinion that it is without jurisdiction of this cause; hence, plaintiff's motion to remand is due to be granted.

Defendants, in their petition for removal, aver jurisdiction in this court on the basis that plaintiff's suit is founded on a claim or right arising under the Constitution, treaties or laws of the United States. Plaintiff's claimed cause of action is a common law action of tort

for deceit. Although defendants are labor organizations within the meaning of the Labor Management Relations Act of 1947, as amended (29 U.S.C.A. 144 et seq.), plaintiff makes no claim under the provisions of that act or under any other law, the Constitution or treaties of the United States.

It is, accordingly, Ordered, Adjudged and Decreed by the court that plaintiff's said motion to remand be and the same hereby is granted and that this action be and the same hereby is remanded to the Circuit Court for the Tenth Judicial Circuit of Alabama.

Done, this the 9th day of June, 1965.

SEYBOURN H. LYNNE
Chief Judge

APPENDIX D

In the Circuit Court,
Tenth Judicial Circuit of Alabama

W. E. Sams,
Plaintiff,
vs.
United Mine Workers of America, an Unincorporated Association, and District 20, United Mine Workers of America, an Unincorporated Association,
Defendants.
No. 9782

DEMURRER TO PLEA IN ABATEMENT

Now comes the plaintiff in the above styled cause and demurs to the Plea in Abatement filed by defendants, and for grounds of demurrer assigns the following, separately and severally:

1. Said petition does not set up facts sufficient, as a matter of law, to abate this action.

2. Said petition is a mere conclusion of the pleader.

3. The matters of fact set up in said petition are contrary on the face thereof to the matters of fact set up in plaintiff's Complaint.

4. Said petition tenders an immaterial issue.

5. Said petition seeks to confer upon the National Labor Relations Board jurisdiction greater than that conferred

by law and based upon such effort attempts to oust this Court of jurisdiction.

6. Said petition nowhere sets up facts sufficient to deny that the complaint of plaintiff is a common law action of tort.

7. Said petition seeks to confer upon the National Labor Relations Board an exclusive jurisdiction which it does not legally possess.

8. Said petition is an illegal, unauthorized, and unjustifiable attempt to oust this Court of its common law jurisdiction.

HARRIS and ESDALE
Attorneys for Plaintiff

APPENDIX E

Circuit Court, Tenth Judicial Circuit of Alabama

W. E. Sams,
Plaintiff,
versus
United Mine Workers of America, an Unincorporated Association Functioning as a Labor Union, and District 20, United Mine Workers of America, an Unincorporated Association Functioning as a Labor Union,
Defendants.
Case No. 9782.

SECOND AMENDMENT TO COMPLAINT

Now comes the plaintiff, and by leave of the court first had and obtained, amends his amended complaint so that the first paragraph thereof as now amended, reads as follows:

Count One

1. The plaintiff claims of the defendants the sum of One Hundred Fifty Thousand & No/100 ($150,000) Dollars as damages, for that, heretofore during, to-wit, the year 1947, the defendants, acting through their agent or employee, then and there acting within the line and scope of his employment by defendants, and in furtherance of defendants' business, did falsely represent to plaintiff, with knowledge that his representation was false, or with reckless disregard of whether it was true or not, and with the intention to deceive the plaintiff, in substance as fol-

lows, that plaintiff was eligible for a pension from the United Mine Workers of America Welfare and Retirement Fund, and that his time was going on just the same as if he were working in the mines if he kept his dues as a member of the United Mine Workers of America paid up until he was sixty years of age. And plaintiff further alleges that, up to the time plaintiff was sixty years of age the United Mine Workers of America Welfare and Retirement Fund were paying pensions to eligible miners who applied therefor on reaching sixty years of age.

Count Two

The plaintiff claims of the defendants the sum of One Hundred Fifty Thousand & No/100 ($150,000) Dollars as damages, for that, heretofore during, to-wit, the year 1954, the defendants, acting through their agent or employee, then and there acting within the line and scope of his employment by defendants, and in furtherance of defendants' business, did falsely represent to plaintiff, with knowledge that his representation was false, or with reckless disregard of whether it was true or not, and with the intention to deceive the plaintiff, in substance as follows, that plaintiff was eligible for a pension from the United Mine Workers of America Welfare and Retirement Fund, and that his time was going on just the same as if he were working in the mines if he kept his dues as a member of the United Mine Workers of America paid up until he was sixty years of age. And plaintiff further alleges that, up to the time plaintiff was sixty years of age the United Mine Workers of America Welfare and Retirement Fund were paying pensions to eligible miners who applied therefor on reaching sixty years of age.

Plaintiff alleges that, at the time said false representation was made, plaintiff was suffering from injuries caused by the explosion on May 29, 1944, of a dynamite cap while

he was at work as a coal miner at the Marvel Mine of Roden Coal Company, and plaintiff was then and there almost totally blinded and physically forever unable to work again as a coal miner, and such facts were obvious and known to said agent or employee of defendants, who made said false representation with the intent that plaintiff should rely upon the same.

And plaintiff alleges that, relying on the superior knowledge of said agent or employee of defendants, he did continue to keep his dues paid up by paying into Local Unions of District 20, United Mine Workers of America, at the rate of $1.25 per month, until he became sixty years of age in the year 1964, although the plaintiff was during that entire period of twenty years, physically unable to work as a coal miner and did not work as such, and all this was known to defendants and to their said agent, servant, or employee acting within the line and scope of his employment.

Plaintiff further alleges that, in 1964, on reaching the age of sixty years, having kept all his union dues fully paid up, and relying on the aforesaid false representations as true, he applied for his pension to the United Mine Workers of America, Welfare and Retirement Fund, and the United Mine Workers of America did reject his application in these words:

> "Denial of Pension
>
> The application of Willie Earl Sams, Address Route 2, West Blocton, Alabama, is hereby denied for the following reasons:
>
> **"Applicant has not established proof of twenty (20) years' classified service in the coal industry within the thirty (30) year period immediately preceding the date his application was received at the fund—July 15, 1934, to July 15, 1964.**

"Applicant claims no employment in the coal industry during 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964; no credit can be given for these years."

Plaintiff claims of defendants damages, actual and punitive, suffered by him as a proximate consequence of said false representations, in the sum of One Hundred Fifty Thousand & No/100 ($150,000) Dollars.

Count Three

The plaintiff claims of the defendants the sum of One Hundred Fifty Thousand & No/100 ($150,000) Dollars, as damages, for that, heretofore, during, to-wit, November, 1958, the defendants, acting through their agent or employee, then and there acting within the line and scope of his employment by defendants, and in furtherance of defendants' business, did falsely represent to plaintiff, with knowledge that his representation was false, or with reckless disregard of whether it was true or not, and with the intention to deceive the plaintiff, in substance as follows, that plaintiff was eligible for a pension from the United Mine Workers of America Welfare and Retirement Fund, and that his time was going on just the same as if he were working in the mines if he kept his dues as a member of the United Mine Workers of America paid up until he was sixty years of age. And plaintiff further alleges that, up to the time plaintiff was sixty years of age the United Mine Workers of America, Welfare and Retirement Fund were paying pensions to eligible miners who applied therefor on reaching sixty years of age.

Plaintiff alleges that, at the time said false representation was made, plaintiff was suffering from injuries caused by the explosion May 29, 1944, of a dynamite cap while he was at work as a coal miner at the Marvel Mine of

Roden Coal Company, and plaintiff was then and there almost totally blinded and physically forever unable to work again as a coal miner, and such facts were obvious and known to said agent or employee of defendants, who made said false representation with the intent that plaintiff should rely upon the same.

And plaintiff alleges that, relying on the superior knowledge of said agent or employee of defendants, he did continue to keep his dues paid up by paying into Local Unions of District 20, United Mine Workers of America, at the rate of $1.25 per month, until he became sixty years of age in the year 1964, although the plaintiff was during that entire period of twenty years, physically unable to work as a coal miner and did not work as such, and all this was known to defendants and to their said agent, servant, or employee acting within the line and scope of his employment.

Plaintiff further alleges that, in 1964, on reaching the age of sixty years, having kept all his union dues fully paid up, and relying on the aforesaid false representations as true, he applied for his pension to the United Mine Workers of America, Welfare and Retirement Fund, and the United Mine Workers of America did reject his application in these words:

"Denial of Pension

The application of Willie Earl Sams, Address Route 2, West Blocton, Alabama, is hereby denied for the following reasons:

"Applicant has not established proof of twenty (20) years' classified service in the coal industry within the thirty (30) year period immediately preceding the date his application was received at the fund to July 15, 1964.

"Applicant claims no employment in the coal industry during 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964; no credit can be given for these years."

Plaintiff claims of defendants damages, actual and punitive, suffered by him as a proximate consequence of said false representations, in the sum of One Hundred Fifty Thousand & No/100 ($150,000) Dollars.

HARRIS and ESDAILE
Attorneys for Plaintiff
By: /s/ CRAMPTON HARRIS
CRAMPTON HARRIS

APPENDIX F

Circuit Court, Tenth Judicial Circuit of Alabama

W. E. Sams, Plaintiff, v. United Mine Workers of America, et al., Defendants.	No. 9782.

STIPULATION

It is hereby stipulated and agreed between the parties to this action as follows:

That the United Mine Workers Welfare and Retirement Fund is a trust fund established pursuant to federal law and is an entity separate and distinct from the United Mine Workers of America as required by law.

That among other requirements for eligibility for a pension from said Fund, any applicant for a pension must establish employment in classified service in the coal industry during 20 years within the 30 years immediately preceding the date of his application. Such regulation or requirement has been in effect since January 29, 1953.

It is further stipulated and agreed that the existence of this regulation was made known to the United Mine Workers of America and to the various Local Unions of the United Mine Workers of America in writing.

The foregoing stipulation is subject to objection thereto by the defendant and without any agreement on their part that the facts herein stipulated are admissible or relevant.

In Witness Whereof, counsel for the respective parties do hereby affix their hands and seals this 13th day of January, 1969.

/s/ CRAMPTON HARRIS
(Seal) Attorney for Plaintiff

/s/ WILLIAM E. (Illegible)
(Seal) Attorney for Defendants